

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of : Paul C. Zimmer

U.S. Serial No. : 09/612,821

Filed On : July 10, 2000

For : PROMOTIONAL CALENDAR AND METHOD

Examiner : M. Torres

Art Unit : 3613

Attorney Docket No. : ZMM-101

APPELLANT'S BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

REAL PARTY IN INTEREST

Applied Printing Company, Inc., 22438 Woodward Ave., Ferndale, Michigan
48220.

RELATED APPEALS AND INTERFERENCES

A prior appeal 2003-0250 was prosecuted in this application, resulting in a reversal of an earlier rejection.

STATUS OF CLAIMS

Claims 1-5 have been presented, claims 1-5 all standing as rejected, the rejections of all of the claims is here appealed.

STATUS OF AMENDMENTS

No Amendments after the final rejection have been filed.

SUMMARY OF THE INVENTION

The present invention comprises a promotional daily calendar 10 and promotional method.

The calendar 10 (Figure 1) has a separate page 12 for each day, each page has a prominent imprint 12 of the name of a recipient of the calendar to thereby be personalized. Each page also has an imprint 18 identifying a donor enterprise to be promoted to the recipient. (Page 3, lines 3-13).

In order to further attract the attention of the recipient, a different text message 22 may be printed on each page 12.

Thus, each day, this arrangement creates a favorable fresh association of the donor enterprise and the recipient to thereby effectively promote the same with the recipient everyday over an extended period of time (Page 3, lines 19-21).

ISSUES PRESENTED

I. Is the calendar of claims 1-3 unpatentable over Hallam (U.S. 964,967) under 35 USC 103(a)?

II. Is the method of claims 4 and 5 unpatentable over Hallam under 35 USC 103(a)?

GROUPING OF CLAIMS

Claims 1-5 are grouped together.

ARGUMENT

This is the second appeal in this application.

The Examiner, in rejecting all of the claims 1-5 under 35 USC 103(a), now relies solely on Hallam (U.S. 964,967).

Hallam describes a book of detachable sheets together comprising a daily calendar with a separate page for each day, each page imprinted with a different message. Advertising copy can be applied in the space B, and each page is placed against a store window. Neither the name of a recipient or sponsor appears on any page.

Hallam, U.S. 964,967 does not describe a calendar which would be distributed to users. Rather, the Advertising Device disclosed is a collection of sheets, each printed with a date and having a space 7B where advertising may be inserted. The sheet is stuck to the inside of a shop window to be displayed to passers by. There is no mention of the nature of the advertising, i.e., presumably this would be a special sale price for particular goods etc., since the name of the shop would presumably be displayed elsewhere by a permanent sign.

The name of the enterprise is thus not described as being printed on each page in the device of Hallam.

Neither is the name of a recipient, as it is not intended to be given away.

The concept of the present invention is to freshly direct the recipient-owner's daily attention to a positive association between the imprinted name of the recipient and the name

of the sponsoring enterprise. The need to turn the page each day draws attention to the printed name of the owner and the enterprise who gave him or her the calendar, as the natural tendency when turning a page is to visually confirm the date on the next page, causing one to consciously look at each page. This drawing of the user's attention to each page is reinforced by the inclusion of the text message recited in claims 2 and 5.

Hallam does not disclose or suggest this arrangement. Hallam is directed to a device for conducting impersonal advertising, not a personalized promotion by association. The Examiner asserts that the printed name of a person on each page and on enterprise identifier is "non functional descriptive material" are not functionally involved in the steps recited. It is noted that only claims 4 and 5 are directed to a method, claims 1-3 being directed to the promotional calendar itself.

The Examiner relies on In re Gulack, 217 USPQ 401 (Fed. Cir. 1983) and In re Lowry, 32 USPQ2d 1031 (Fed. Cir. 1994). After careful review of these cases, applicant notes that in both Gulack and Lowry the Federal Circuit reversed a rejection which disregarded printed matter or recorded data as functionally unrelated to a substrate. The Court in Gulack made clear that patentability under 35 USC 103 made reside in printed matter.

The Examiner also cites Ex Parte Breslow, 192 USPQ 431, but to the extent that is construed as precluding patentable distinctions being found in printed matter, is erroneous in view of In re Gulack. See also In re Miller, 164 USPQ 47 (1969).

Here, a promotional calendar and method are claimed which functionally relate the printed matter to the pages of a multi-page daily calendar. The heart of the concept is based on the powerful mental effect of recognition of one's own name. This recognition is used to

promote an enterprise by the visual juxtaposition of a recipient's name and an enterprise identifier each day to each day create a mental association with the enterprise in the mind of the recipient. That is, a fresh impression of the mental association is presented to the recipient as he or she turns a page of the calendar and his or her attention is drawn anew that day to the appearance of his or her name in visual association with the enterprise identifier.

The fresh presentation of a visual association of the sponsor and recipient each day of the year is important advance in promotional methodology.

The relation of such printed matter and a calendar is not suggested by Hallam and accordingly, not obvious under 35 USC 103(a).

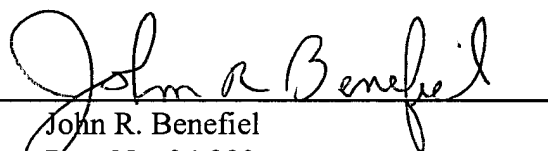
Accordingly, claims 1-5 are urged to define patentably over Hallam and the other references of record which likewise do not show the claimed relationship.

Reversal of the rejection of claims 1-5 under 35 is thus respectfully requested.

Respectfully submitted,

Date: July 16, 2004

By:

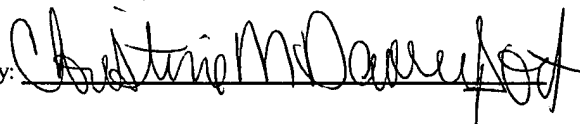

John R. Benefiel
Reg. No. 24,889

280 Daines Street
Suite 100 B
Birmingham, Michigan 48009
(248) 644-1455

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By:



CLAIMS ON APPEAL

1. A promotional calendar comprising:
a series of pages each imprinted with a respective day of the year and held together to allow turning or tear off of each page;
each page prominently printed with the name of a person to personalize each page of the calendar;
each page also prominently printed with an identifier of an enterprise to be promoted, whereby said person's name and said enterprise identifier are visually associated on each page.
2. The calendar of claim 1 wherein a text message is also imprinted on each calendar page differing from the text messages of the other pages.
3. The calendar of claim 2 wherein only the date is printed on each page to provide a perpetual calendar.
4. A method of promoting an enterprise to selected individuals comprising the steps of prominently printing the name of each such individual on each page of a daily calendar having a separate page for each day;
imprinting an enterprise identifier on each page of said daily calendar so as to visually associate said printed name and said enterprise identifier on each page thereof; and,

distributing said daily calendar to each of said individuals.

5. The method according to claim 4 further including the step of imprinting a different message relating to the enterprise on each page of said daily calendar.